

Appln. No. 10/520,092
Amdt. Dated: January 8, 2008
Reply to Office action of October 19, 2007

REMARKS/ARGUMENTS

This communication is responsive to the Office Action with a mailing date of October 19, 2007. Claims 19 through 34 are currently pending. The Examiner has rejected claims 19, 23-25, 29 and 30 under 35 U.S.C. § 102(b), claims 19, 23-25, 29-31, 33 and 34 under 35 U.S.C. § 102(e), and claims 20-22, 26-28, and 35 under 35 U.S.C. § 103(a). Applicant respectfully traverses the Examiner's rejections and requests reconsideration and withdrawal of the rejection based on the following remarks.

Regarding the rejections of claims 19, 23-25, 29-31, 33 and 34 under 35 U.S.C. § 102(e), and claims 20-22, 26-28, and 35 under 35 U.S.C. § 103(a), the Examiner relied on US Patent Application Publication 2004/0259709 to Guidotti et al. ("Guidotti"). However, Guidotti is not prior art to Applicant's invention. Guidotti is a US Patent Application, which claims the benefit of a PCT Application filed on October 31, 2002. The current application claims priority to German Application 102 37 544.5 filed on August 16, 2002 which antedates the 102(e) date for Guidotti. A certified copy of the German Application upon which Applicant claims priority was submitted with the present application on January 4, 2005; therefore, Guidotti is not prior art to Applicant's invention. During a telephone interview held on October 29, 2007, the Examiner agreed that Guidotti was not prior art to Applicant's invention; therefore, reconsideration and withdrawal of the rejection of claims 19, 23-25, 29-31, 33 and 34 under 35 U.S.C. § 102(e), and claims 20-22, 26-28, and 35 under 35 U.S.C. § 103(a) is respectfully requested.

The Examiner also rejects claims 19, 23-25, 29 and 30 under 35 U.S.C. § 102(b) as being anticipated by US Patent 3,956,872 to Johnson (“Johnson”). The Examiner asserts that Johnson discloses a packaging comprising a blank having longitudinal and transverse fold lines, a stamped marking on a wall panel of the packaging blank, the marking comprising at least one center-symmetrical configuration having two straight lines having intersecting paths, wherein the marking correlates to dimensions and the geometry of the packaging as the markings are applied to a specific region of the packaging. The Examiner further asserts that since the marking is recessed into the wall panel of the packaging, it is understood that a cross-section of the marking will be U-shaped and have a substantially uniform thickness. Applicant respectfully disagrees.

Johnson does not disclose a marking that correlates to the dimensions and the geometry of the packaging. Johnson discloses an apparatus for branding markings, such as date indicia, onto the surface of a carton. To correlate means to have a mutual or reciprocal relation. Date indicia are merely visual labels to inform a consumer of the age of the contents of the packaging and have no relation to the dimensions of the packaging. Date indicia should be applied to a specific location on a carton, but this does not mean that the marking itself contains information related to the specific location where it should be applied. Also, there is no teaching in Johnson that the marking relates to the shape of the carton. Therefore, Johnson fails to include this element of Applicant’s invention.

Johnson also fails to disclose a marking having a U-shaped cross-section of substantially uniform thickness. Johnson discloses an apparatus for applying date indicia. (col. 1, lines 8-11) Johnson discloses that the typical methods for applying date indicia to thermoplastic coated

paperboard milk cartons are inking, stamping or embossing, and branding. (col. 1, lines 22-25)

Applying date indicia to the surface of paperboard does not affect the cross-section of the paperboard like the type of stamping disclosed by the Applicant, which is performed in such a way as to create a marking with a U-shaped cross-section of substantially uniform thickness.

The methods of applying the date indicia disclosed by Johnson are meant to apply to the surface of the paperboard, especially the preferred method identified by Johnson, which is branding.

Neither inking nor branding will produce a stamped marking with a U-shaped cross-section, and Johnson does not disclose a method of stamping or embossing that will generate a U-shaped cross section of substantially uniform thickness because it is unnecessary when applying date indicia to the surface of paperboard.

Therefore, Johnson fails to anticipate Applicant's invention and Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 19, 23-25, 29 and 30 under 35 U.S.C. § 102(b).

CONCLUSION

In view of the foregoing amendments and remarks, Applicant submits that the claims presented herewith are patentable over the prior art of record and in condition for allowance. Applicant respectfully solicits prompt action thereon. If any questions remain, the Examiner is invited to phone the undersigned attorney.

Respectfully submitted,

/Antranig Baronian/
Antranig Baronian
Reg. No. 58,501
Paul & Paul
2000 Market Street
Suite 2900
Philadelphia, PA 19103
Tel. (215) 568-4900

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